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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2515/2014

Decision adopted by the Committee at its 113th session, (16 March–2 April 2015)

Submitted by:	X (represented by counsel, Helge Norrug)
Alleged victim:	The author
State party:	Denmark
Date of communication:	11 December 2014 (initial submission)
Date of decision:	1 April 2015
Subject matter:	Deportation to Afghanistan
Procedural issues:	Insufficient substantiation of claims
Substantive issues:	Risk of torture and ill-treatment, infringement of freedom of religion
Articles of the Covenant:	7; 18 and 26
Article of the Optional Protocol:	2

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Decision on admissibility*

1.1 The author of the communication is Mr. X, an Afghan national born on 1 January 1983. He claims that his deportation to Afghanistan by the State party would constitute a violation of his rights under articles 7, 18 and 26 of the Covenant. The author is represented by counsel.

1.2 On 22 December 2015, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided not to issue a request for interim measures under rule 92 of the Committee's rules of procedure. He also determined that observations from the State party were not needed to ascertain the admissibility of the present communication.

The facts as presented by the author

2.1 The author is ethnic Pashto and originally professed Sunni Muslim faith. He used to live in the town of Shindan, province of Herat, Afghanistan, with his parents, brother and sister. He worked as a photographer. The author claims that he was asked by a powerful rich man, Mr. H.A.K., to record his daughter's wedding; that shortly after the wedding, the video was stolen by unknown people; and that, when Mr. H.A.K became aware of it, he and other men abducted the author and his sister and kept them in a cellar. He further alleges that Mr. H.A.K. broke his legs, jaw and nose. Two weeks later, he moved to Tehran, where he resided illegally for two years, and then to Greece, where he worked and resided legally for about six years. After receiving threats by telephone from an unknown person, who told him that Mr. H.K.A. would kill his brother, he felt insecure and decided to leave Greece.

2.2 On 17 January 2012, the author arrived in Denmark where, on 24 January, he requested asylum before the Danish Immigration Service. He referred to the experiences that he underwent in Afghanistan and Greece and claimed that, if returned to his country of origin, he would be persecuted by Mr. H.A.K., who was still a powerful local man. He also pointed out that he was illiterate and that he professed Sunni Muslim faith. The author claims that, a few weeks later, he entered in contact with a Christian Iranian man, who introduced him to this new religion.

2.3 On 8 June 2012, the Danish Immigration Service rejected the author's request for asylum. The author's appeal was dismissed by the Danish Refugee Board on 3 October 2012.

2.4 The author claims that, in or after the autumn of 2012, he visited for the first time a Christian church that was located near the asylum centre in Ranum, where he met a Presbyterian pastor, Mr. P.V., who later became his teacher of Christianity. Since he felt harassed by other asylum seekers at the centre, who disliked his attendance at the church, he was transferred at pastor P.V.'s request to another asylum centre in Avnstrup. He started to participate in Farsi-speaking Christian groups, at Saint Luke's Church, where he was baptized on 2 June 2013, and then at the Church of the Apostles.

2.5 On 26 July 2013, the author requested that the Danish Refugee Board reopen his case on grounds of his conversion to Christianity. On 13 August 2013, the Board rejected

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier De Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

his request and ordered him to leave the State party. On 31 August and 12 November 2013, the author submitted a request for reconsideration before the Board. Meanwhile, in October 2013, he was taken to the Ellebæk deportation centre, where he claims he attended the worship services led by chaplain P.B every Thursday and, as a consequence of his Christian faith, he received threats and was assaulted by other Afghan inmates at the centre.

2.6 On 22 November 2013, the Danish Refugee Board decided to reopen the author's case. The author left the deportation centre and continued to study Christianity at the Lutheran Mission College. On 23 October 2014, the author argued before the Board that he was at risk of persecution if returned to Afghanistan, since sharia law provided for capital punishment for those who converted from Islam to Christianity. He further maintained that, in the light of the assault that had occurred at the Ellebæk deportation centre by some Afghan inmates, it must be assumed that he would be recognized as Christian in Afghanistan. In support of his allegations, he offered a certificate of baptism issued by Saint Luke's Church, a written statement by the principal of the Lutheran Mission College and a joint statement by six of its students.

2.7 On 27 October 2014, the Danish Refugee Board rejected the author's request for asylum and stated that there was no ground for believing that he would be persecuted if returned to his country of origin. It found that it was unlikely that his alleged conversion to Christianity was genuine, lasting and firm, and that he would live and practice this religion upon his return to Afghanistan. Moreover, his limited Christian activities in the State party could not be known by the Afghan authorities. The Board also noted that he had lived outside his country of origin for about eight years; that his alleged conversion only took place after his original asylum request had been dismissed by the Board; and that his statements about the daily practice of his faith — reading the Bible and participating in the Church's activities — were inconsistent with his previous allegations of being illiterate and lacking skills to speak in other languages, including Danish, than his mother tongue. It also found that there was no need to call the witnesses offered by the author, including pastor P.V., since they had already produced written statements.

The complaint

3.1 The author asserts that the State party's authorities did not assess adequately the risk that he would be subject to if returned to Afghanistan, notably persecution or torture and other cruel, inhuman or degrading treatment or punishment, which would violate article 7 of the Covenant. If returned, he would be persecuted owing to his conversion to Christianity. However, the Danish Refugee Board arbitrarily concluded that his conversion was not genuine, without taking into account that his interest in Christianity had begun more than one year before his baptism, which was preceded by several months of preparation guided by a Christian pastor; that he had openly announced and practised his Christian faith; and that he had been threatened by other Afghan persons at the Ellebæk deportation centre. Furthermore, it set aside the statements produced by pastors in Denmark, who were better placed than the Board members to assess the reality of the conversion, as they had theological knowledge.

3.2 The Danish Refugee Board focused excessively on the fact that the author provided contradicting statements as to his ability to read and speak different languages. In that regard, the author holds that he has been studying and was taught Christianity in Danish and Farsi. He also maintains that it is well known that converts from Islam are at risk of persecution in Afghanistan and that, in any case, it is not relevant whether the Afghan authorities currently know about his conversion.

3.3 As to his claims under article 18, the author argues that, if deported to Afghanistan, he would not be able to practice his faith, and that the decision of the Danish Refugee Board could not be based on the assumption that he will hide it. As part of the rights

enshrined in article 18, he must be able to manifest his religion and to carry out activities related to it.

3.4 The author claims that the State party violated his right under article 26 of the Covenant since the question of his conversation to Christianity was not examined at the first instance by the Danish Immigration Service but only by the Danish Refugee Board.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the Covenant.

4.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

4.3 The Committee observes that the author's original request for asylum on the grounds of his fear of persecution by a private individual was refused by the Danish Immigration Service and the Danish Refugee Board. Since the author claimed that he had converted to Christianity after these decisions, on 22 November 2014, the Board reopened the author's case in order to examine his request for asylum on this new ground, giving the author opportunity to substantiate his new allegations and to submit evidence in support of them. On 27 October 2014, the Board dismissed his new allegations due to, inter alia, his contradicting statements and his failure to show that the Afghan authorities might be aware of his conversion. The author disagrees with this decision. However, the Committee observes that his claims mainly rely on his mere membership of a particular Christian church and that he has failed to identify any irregularity in the decision-making process, or to explain why the decision of the Board is manifestly arbitrary, for instance, owing to its failure to take properly into account a relevant risk factor. Accordingly, the Committee considers that the author's claims under articles 7, 18 and 26 of the Covenant have been insufficiently substantiated for the purposes of admissibility, and concludes that the present communication is inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol;

(b) That the decision be transmitted to the State party and to the author.